Supreme Court, U. S.
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In the

Supreme Court of the United States

October Term, 1979

NO. 79-1766

In the Matter of
HARTFORD TEXTILE CORPORATION,
OXFORD CHEMICALS, INC.
WELLINGTON PRINT WORKS, INC.,
Debtors.

ROSE SHUFFMAN, As Executrix of
the Estate of OSCAR SHUFFMAN, Deceased,
Petitioner,

—against—

HARTFORD TEXTILE CORPORATION,
OXFORD CHEMICALS, INC.
WELLINGTON PRINT WORKS, INC.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT

DAVID K. SHUFFMAN
Attorney for Petitioner
14 East 60th Street
New York, New York 10022
Telephone: (212) 755-0006

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioner* prays that a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the Second Circuit, entered December 27, 1979.

*As used herein, "Petitioner" refers to both Rose Shuffman, as Executrix of the Estate of Oscar Shuffman, Deceased and the late Oscar Shuffman.

OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit (Appendix E, infra) is reported at 613 F.2d 388.

JURISDICTION

The Order of the United States Court of Appeals for the Second Circuit was entered on December 27, 1979. The en banc order of the United States Court of Appeals for the Second Circuit denying the suggestion for en banc rehearing of the December 27, 1979 order was entered on February 7, 1980, and is reprinted at Apprendix F ,infra. The order of the United States Court of Appeals denying rehearing of the December 27, 1979 order was entered on February 7, 1980, and is reprinted at Appendix G infra.

The Endorsed Memorandum of the United States Dijtrict Court (Owen, J.), dated April 2, 1979, is reprinted at Appendix D , infra.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1254.

QUESTIONS PRESENTED

1. Whether, under India Wharf Brewery, Inc., 96 F.2d 710 (2nd Cir., 1938) and Hume v. Myers, 242 F. 827 (4th Cir., 1917), fee applications in bankruptcy proceedings are administrative in nature, and therefore reviewable any time while the estate is still open?

The Court of Appeals declined to answer this question, which the Bankruptcy Court answered in the negative, by affirming the District Court's interpretation of the appeal as an appeal from an order denying reargument, which it held to be non-appealable. Inherent in the opinion, however, was an unmistakable no!

2. Whether, under Governor Clinton, Co. v. Knox, 120 F.2d 119 (2nd Cir., 1941), In re Arlan Dep't Stores, Inc. ___F.2d___ (2nd Cir., 1979) and General Order in Bankruptcy 44 fees may be awarded to attorneys who breach their fiduciary duty by withholding material information from the Court and Creditors, and otherwise engage in conduct in violation of 18 U.S.C. 152?

The Court of Appeals refused to answer this question, despite the Bankruptcy Court's holding that counsel had "lied".

3. Whether, under Browder v. Director, Ill. Dept. of Corrections, 434 U.S. 257, 263 n. 7 (1978), Federal Land Bank of Springfield v. Hansen, 111 F.2d 82 (2nd Cir., 1940) and In re W. F. Hurley, Inc., 612 F.2d 392 (8th Cir., 1980) motions to reargue are reviewable for an abuse of discretion?

The Court of Appeals answered this question in the negative.

4. Whether, under Bankers Trust Co. v. Mallis, 435 U.S. 381 (1978), the District Court and Court of Appeals abused their discretion in narrowly interpreting an inarticulately drawn Notice of Appeal, and by interpreting said Notice as being from the denial of reargument only, despite the Brief which clearly denominated both orders as being presented for review, when such narrow interpretation foreclosed all avenues of review on a matter of important public policy and where no prejudice to Respondents would result from a broad reading and waiver of technicalities?

Inherent in the opinion of the Court of Appeals is an emphatic "NO".

5. Whether, under Brown v. Board of Education, 344 U.S. 1 (1952), Matter of Gervich, 570 F.2d 247 (8th Cir., 1978) and Barr Rubber Products v. Sun Rubber Co., 425 F.2d 1114 (2nd Cir., 1970) cert. denied, 400 U.S. 878 (1970), the Court of Appeals abused its discretion and breached its duty in failing to take Judicial Notice of its own prior orders, which refusal resulted in "clearly errors" statements of fact and conclusions of law based upon the erroneous facts?

Inherent once again in the opinion of the Court of Appeals is an emphatic "NO."

6. Whether, under Brown v. Board of Education, 344 U.S. 1 (1952), Matter of Gervich, 570 F.2d 247 (8th Cir., 1978) and Barr Rubber Products v. Sun Rubber Co., 425 F.2d 1114 (2nd Cir., 1970), cert. denied 400 U.S. 878 (1970), the District Court and Court of Appeals abused their discretion and breached their duty in failing and refusing

to take Judicial Notice of the findings of the Bankruptcy Court that Respondents and their counsel had "lied," and that the entire Chapter XI was a "ripoff" of everybody?

Inherent in the opinion of the Court of Appeals is an emphatic "NO."

7. Whether, under the rulings in Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944); Shawkee Mfg. Co. v. Hartford Empire Co., 322 U.S. 271 (1944); Pepper v. Litton, 308 U.S. 295 (1939); Barr Rubber Products Co. v. Sun Rubber Co., (2nd Cir., 1970), 425 F.2d 114; Article III of the United States Constitution, the Supreme Court has a duty to vacate and reverse an order based upon a "fraud on the Court" perpetrated by one of its officers enabling them to profit from their wrongdoing and reverse the adage that 'crime does not pay'?

Insofar as this question relates to the Court of Appeals, inherent in the Opinion of the Court of Appeals is a negative answer to this question.

8. Whether, under In re Grand Jury Investigation, 610 F.2d 202 (5th Cir., 1980), articles in the Gannett Newspapers charging Respondents and their counsel with filing false documents, perjury and other acts of bankruptcy fraud, together with other published reports attributed to official government sources implicating the Bankruptcy Judge and others to reports of payoffs and other conduct constituting "high crimes and misdemeanors," constitutes a prima facie showing of wrongdoing in order to require an evidentiary hearing into charges of bias, prejudice and the appearance of impropriety requiring recusal and disqualification?

The Court of Appeals answered this question in the negative.

9. Whether, under Rule 19 of the Rules of the Supreme Court the United States Supreme Court will grant certiorari as an exercise of its powers of supervision in a case in which prominent jurist and respected members of the media have called into question and otherwise challenged the integrity and honesty of the administration of justice as a result of a consistent pattern of simple legal and factual errors, which taken as a whole constitute a radical departure from the accepted and usual course of judicial proceedings which perpetuate a fraud and an injustice thereby depriving Petitioner of her Constitutional rights?

10. Whether, under Rule 38 of the Federal Rules of Appellate Procedure and 28 U.S.C. §1912, the Court of Appeals abused its discretion in awarding "double costs" to Respondents, who according to the Bankruptcy Court, engaged in conduct in violation of 18 U.S.C. 152; and in threatening to enjoin Petitioner and her counsel is an effort to thwart the exercise of their First and Fifth Amendment privileges of "freedom of speech" and "due process" of law as is further required by the Code of Professional Responsibility?

STATEMENT OF FACTS

The factual history in part, of In re Hartford Textile Corporation et al, repeated here, has previously been presented to the Supreme Court in Case Nos. 77-1812, 79-178, 79-681, 79-918, 79-942 and 77-1001. The Statement of Facts in the Petition at bar though somewhat repetitious -- does present additional material to the High Court for review.

Petitioner is very much aware that any Petition which affirmatively represents as as part of the Petition, as this one does, that major felonies have been committed by Judges of the Court of Appeals and lower Federal Court Judges will more than likely by swept under the rug and denied. The track record of the Supreme Court on the prior Hartford Petitions makes this perfectly clear.

However, with the publication of the Gannett Newspaper's recent feature article reporting the fact that crimes have been perpetrated by Judges of the Second Circuit and others, Petitioner's heretofore ignored representations take on new meaning and significance. Indeed, now that the Gannett article has been published Petitioner has been informed that additional exposes by other media are in the offing. In addition, Petitioner has entered into negotiations with a major publisher for the book rights to her story.

While exposes in the press are no substitute for the honest administration of justice in the Courts, they do fulfill a necessary function when the administration of justice in the Courts has broken down.

Petitioner has taken the time and expense to once again present her case to the Supreme Court, as the ultimate step in securing her due process and equal protection rights.

Herewith, then are the facts:

I. HISTORY

Petitioner is the executrix of the estate of Oscar Shuffman, who, prior to the filing of the Chapter XI petition, had entered into a commission agreement with Hartford Textile Corporation, the debtor-in-possession. The contract provided that Shuffman was to receive a finder's fee of one cent per pound on all vinyl delivered to Hartford under a separate contract between Hartford and Rudd Plastic Fabrics Corporation. The contract between Hartford and Rudd called for periodic shipments of an eventual total of ten million pounds of vinyl.

At about the same time, and with the full knowledge of Hartford, Shuffman entered into an agreement with Rudd providing that Shuffman was to receive a sales commission of four percent of all merchandise sold and shipped to Hartford during a five-year period.

Shortly thereafter, Rudd notified the debtors that it would not honor its agreements with the debtors unless it was excused from delivering a lighter yield of material called for in the purchase order agreements which it had accepted.

Rudd, the debtors, Shuffman and their respective counsel then met together, resulting in a reaffirmation by Rudd of its entire commitment to the Debtors and of its obligation to Shuffman.

Rudd then started shipping to the debtors under the purchase orders; but continued to withhold the lighter yield. Rudd also refused to honor its contract with Shuffman. The debtors did honor their agreement with Shuffman, paying commissions as merchandise was received and accepted from Rudd.

Before Hartford encountered the financial difficulties that forced it into Chapter XI, Rudd made partial deliveries of only the heavier yield of vinyl pursuant to the agreement, Hartford paid commissions to Shuffman based upon the amounts received, Rudd failed to pay Shuffman on the amounts shipped, and Shuffman commenced an action against Rudd in order to force compliance with his agreement with them.

During the Shuffman-Rudd litigation, Hartford agreed to a voluntary price increase in an effort to obtain the lighter yield of vinyl under its contract. However, Rudd still persisted to deliver only the heavier grade of vinyl and refused to deliver the lighter yield. Shuffman then settled his litigation against Rudd by reducing his compensation from Rudd on the first two purchase orders predicated upon Rudd's agreement to make delivery of the lighter yield, extending the Shuffman-Rudd agreement to whatever period of time was necessary in order for Rudd to make full delivery of the original ten million pounds of vinyl as called for by Hartford.

As financial problems beset Hartford, it fell behind in its payments to Rudd for goods received. Approximately two weeks before Hartford filed its Chapter XI petition, Rudd notified Hartford that, because of Hartford's delinquencies, it would cancel the supply contract. Hartford countered that it was Rudd who breached the agreement by failing to deliver the lighter yield of vinyl and was withholding payments as a result.

For the purpose of the bankruptcy proceedings, Hartford's counsel, Samuel Bushwick, Esquire, associated himself with the firm of Weil, Gotshal and Manges. Both Bush-

wick and the firm of Weil, Gotshal and Manges worked and consulted together in the filing of the Chapter XI petitions and the statement of affairs revealed that both were paid in advance of the filing.

In the original petitions of Hartford and Wellington, four lawsuits against the debtors and their officers were omitted, although Mr. Bushwick was defense counsel on each. These four lawsuits, started by the brothers and sister of the president of Hartford (Supreme Court, New York County, Index Nos. 2162/65, 3528/65, 7443/65 and 9400/65), charged the corporate officers with fraud, mismanagement, waste and conversion. Significantly, one of these actions was a stockholders' derivative action.

Subsequently, when the schedules of assets and liabilities and the statement of executory contracts were filed, no mention was made of these pending litigations and no mention was made of the agreement with Shuffman. The statement of executory contracts did, however, list the Hartford-Rudd agreement.

Immediately after filing the Chapter XI Petition, the debtor-in-possession, on advice of counsel, waived Rudd's pre-petition breach and demanded continued performance under all the terms of the pre-petition contract, under threat of suit, including delivery of all grades of vinyl.

As a direct result of this threat of suit, Hartford and Rudd entered into compromise negotiations to which Shuffman was originally invited and subsequently excluded, with a promise that his interests would be protected and given a $1,500.00 pre-payment of his fee from Hartford as a sign of good faith. The

compromise agreement eventually reached, which called for delivery of approximately 1.2 million pounds of vinyl at an increase in price and excused Rudd from delivery of the lighter yield, which was to be obtained elsewhere, was submitted to the Creditor's Committee for approval and in so doing no mention was made of the Shuffman agreement. Predicated upon the approval of the Creditor's Committee, it was approved by the court, without prior notice to Shuffman and with no mention being made of the Shuffman agreement or the pre-payment to Shuffman. Shuffman had not yet filed a claim against the debtor. However, the debtor continued its monthly payments to Shuffman.

Shuffman was then threatened with the discontinuance of his monthly commission payments unless he cooperated with the debtor's efforts to arrange with W.R. Grace a settlement along the lines of the Hartford-Rudd settlement. As a result, Shuffman decided to file a formal (pro se) claim to protect his interests.

Shuffman's pro se claim, when filed, was for approximately $80,000 for work, labor and services pursuant to contract. During the next three months, and prior to the confirmation of the plan of arrangement, Shuffman was paid, pursuant to his contract, on goods received and accepted by Hartford subsequent to the filing of its petition and delivered pursuant to the compromise agreement. Shuffman accepted these payments "as only part payment on money owed to O. Shuffman. . . . only as per original agreement of R. Magid, Pres. Hartford Textile Corp. and Oscar Shuffman." These payments were listed and reported to the Court as expenses of administration.

Approximately three months after Shuffman filed his pro se claim, the plan of arrangement was confirmed and the debtor filed an objection to Shuffman's claim stating that Hartford's books and records showed $1,232.87 owing to Shuffman and simultaneously discontinued making payments to Shuffman on advise of counsel since there was no new agreement and withdrew its objection to the W.R. Grace claim. On the date of confirmation, Shuffman was indebted to the debtor in excess of $2,000.00 for unearned commissions advanced to him and the Hartford Rudd compromise agreement had about four months to go.

Extensive negotiations were had by the debtor and Shuffman's then counsel, during which Shuffman died. When it appeared likely that a tenative agreement was in the offing the objection to Shuffman's claim was withdrawn.

Approximately eleven months later, when negotiations broke off, the debtor moved to restore the objection and Shuffman's counsel, at that time counsel for the executrix, cross-moved to amend the claim to assert an administrative expense in part, entitled to priority and/or to amend the compromise order.

In its answer to the application, the debtor-in-possession admitted that it was a party to listed executory contracts with Rudd and had listed these contracts in its statement of executory contracts. The debtor also maintained that its only indebtedness to Shuffman was $1,232.87, pre-petition.

On December 20, 1976, both motions were argued before the Bankruptcy Court. The Bankruptcy Court granted the debtors' motion to reinstate its objection, refused to allow time for discovery, and simultaneously ordered an immediate hearing limited to the pre-petition liability, while reserving decision on the Cross-Motion to amend the claim so as to treat the major portion thereof as an administrative expense entitled to priority, for payment of the administrative expense, or, in the alternative, to amend the Court-approved Hartford-Rudd compromise order to provide for the continuation of commission payments to Shuffman from both Hartford and Rudd. To the cross-motion, as exhibits, were attached copies of statements by Hartford as debtor-in-possession to Shuffman and checks paid pursuant thereto. The Court also held that indebtedness, if any, incurred during the Arrangement and thereafter was a question of law, not fact, for which no hearing was required or testimony allowed.

On June 1, 1977, the Bankruptcy Court ruled that the claim be reduced to $432.67, as a general unsecured claim, based upon the testimony of Reuben Fox, debtors, Comptroller, that a 64(a)(2) payment had been made to Shuffman pursuant to Court Order shortly after the petitions were filed, based upon entries in the books of Oxford Chemicals, Inc., another one of the debtors. The report of the Court appointed accountants, introduced as an Exhibit, found no reference to indebtedness owed to Shuffman in Oxford's books.

The cross-motion of the Estate was denied substantially because the Court characterized the Court-ordered debtor-Rudd Compromise as a "new" agreement. The Court found that the original Hartford-Rudd and Shuffman-debtor agreements had terminated, although the Court also held that Rudd's Notice of Cancellation for the executory contracts listed in the debtor-in-possesion's Statement of Executory Contracts was sent after the filing of the Chapter XI Petitions. The original Hartford-Rudd agreements had no provision covering the eventuality of insolvency of either party.

The Bankruptcy Court further held that there could be no post-petition liability to Shuffman in the absence of a post-petition contract. The Opinion, in pertinent part, stated:

> The simple fact is that there was no post-petition agreement between claimant and the debtor-debtor-in-possession and there cannot be a priority claim arising from a contractual position without a contract. Accordingly, there is no relevance to cases dealing with executory contracts at the time of filing in this court, and which are dealth with under Section 313(1), 11 U.S.C. §713(1).

The Court also said:

> Simply stated, the contract between the debtor-in-possession and Rudd after the Chapter XI was a new contract, and if it did not contemplate a need for Shuffman, it did not have to.

On June 28, 1977, Petitioner, claiming error, moved to amend the findings, make additional findings and to amend the Decision. Upon reconsideration, the Bankruptcy Court found, without conducting an evidentiary hearing, that in view of the debtor-in-possession's voluntary payments which the Court overlooked in its prior Opinion there must have been a new post-petition finder's fee agreement between Shuffman and the debtors-in-possession and accordingly amended the prior Opinion and Order to call for the payment of $3,346.71 to Shuffman for the unpaid commissions on Rudd's deliveries made after Confirmation and Discharge on September 5, 1974 as administrative expenses, in addition to the total of $9,000 which had been voluntarily paid to Shuffman between the filing of the petition and the confirmation of the Plan of Arrangement and Discharge Order. The Court also amended its Opinion to find that Rudd's Notice of Cancellation was sent prior to the filing of the Chapter XI Petitions.

On February 22, 1978, the United States District Court for the Southern District of New York (Brieant, J.) affirmed the Bankruptcy Court's Order and Amended Order in all respects. The District Court cited a case calling for per centage payments to pre-petition creditors to support the Bankruptcy Court's Amended Order which approved the post-Confirmation dollar for dollar brokerage commission payments to Petitioner.

On March 28, 1978, at the argument of the motion for rehearing, the District Court stated that it would "misread" his Memorandum

and Order to suggest that he had approved any commission payments for the post-Confirmation period. Further the Court stated that it thought that the Amended Order provided commission payments for deliveries made during the Chapter XI not after. However, due to the intervening filing of a Notice of Appeal to the Court of Appeals for the Second Circuit, the District Court was divested of jurisdiction to correct its errors.*

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*On October 26, 1979, Petitioner filed a Motion for Leave to File a Petition For A Writ of Mandamus and Petition For a Writ of Mandamus (Case No. 79-681) seeking to obtain a transcription of the oral argument held in the Court of Appeals on May 9, 1978 on Petiioner's first Motion for Order Mandating Jurisdiction Back to the District Court. On November 8, 1979, the Court of Appeals granted a motion seeking transcription of the Court's tape recording which had been pending for over one year and provided Petitioner with a semi-complete transcript of the argument.

The transcript provided conclusively shows that a "CORRECTED" Order received one week after receipt of the original order on the motion for remand was altered and falsified by Staff Counsel to the United States Court of Appeals for the Second Circuit.

When brought to its attention, the Court of Appeals, as opposed to correcting the forged, back-dated document, kept silent and allowed

Immediately prior to the "charade" hearing, Petitioner on August 9, 1978 and September 19, 1978 moved to have the Bankruptcy Court vacate its clearly erroneous order and "amended order" and to disqualify itself in an effort to obviate the necessity of the continuing appeals. The Bankruptcy Court refused to vacate its order and amended order and further refused to recuse itself despite the fact

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* continued from previous page

the phoney order to stand for Supreme Court review in Case No. 77-1812.

In her Petition for a Writ of Certiorari in Case No. 77-1812, Petitioner advised the Supreme Court that "amended findings" of the Bankruptcy Court resulted from a "fix", which was being aided and abetted by the United States Attorney. Despite the District Court's categorization of the forged, altered "CORRECTED" Order as "incomprehensible", the Supreme Court refused to review the phony order and paved the way for a judicially orchestrated cover up of the fix.

On September 19, 1979, the Court of Appeals conducted a "charade" hearing on Petitioner's Motion for Order Directing the President to Appoint a Special Prosecutor to investigate the charges of wrongdoing which motion had already been denied ten weeks earlier by a previous panel. The events leading to the "phony" hearing, and the participants' knowledge thereof, are detailed in the Motion for Leave to File a Petition for a Writ of Mandamus, etc. in Case No. 78-681

that the amended findings, reached without an evidentiary hearing, provided for the post-Confirmation commission payments, which the District Court mistakenly and unwittingly had approved.

Petitioner also moved in the District Court to have that Court advise the Court of Appeals of its erroneous Memorandum and Order, in the hope of obviating the imminent hearing of the Appeal in the Court of Appeals. The District Court, though stating it had made an "awful mistake," denied the motion for "lack of jurisdiction", thereby leaving it to the Court of Appeals to correct the error.*

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*On or about December 12, 1979, Petitioner filed a Petition for a Writ of Certiorari in the Supreme Court to review the Court of Appeals' Order dismissing the appeal from the District Court's Order denying this motion. Petitioner maintains that the District Court and Court of Appeals breached their duty to honestly administer justice by refusing to correct the clearly erroneous orders.

Both this Petition, Case No. 79-918 and Petition No. 79-681, were denied.

On October 19, 1978, the stage was thus set for oral argument in the Court of Appeals seeking reversal of the District Court's clearly erroneous Memorandum and Order which had affirmed the Bankruptcy Court's original Order and Amended Order which provided for the post-Confirmation dollar for dollar commission payments to the Petitioner. Among the three judges who comprised the October 19, 1978 panel where two of the Judges who participated in the September 19, 1978 "charade" hearing on the motion seeking the appointment of a Special Prosecutor.

On October 25, 1978, Petitioner returned to the Bankruptcy Court seeking an Order of Contempt against Respondents and their counsel for the numerous false, misleading and otherwise deceptive statements made throughout the course of the proceedings. Despite denying the motion for lack of jurisdiction, the Bankruptcy Court did direct the filing of a Complaint against Respondents and their counsel with the United States Attorney pursuant to 18 U.S.C. § 3057, charging, among other things, perjury, conspiracy, fraud, filing false documents, etc. According to the Court, based upon the documentary evidence, the original findings were not only clearly erroneous but resulted from the numerous false documents and other acts of bankruptcy fraud perpetrated by Respondents and their counsel.

On or about November 9, 1978 Petitioner filed a similar motion for orders of contempt in the District Court based upon Respondents' and their counsel's wrongdoing in that forum. Six months later, after several adjournments and after stating that the motion required

oral argument, the District Court, without conducting the heretofore necessary argument, denied the motion. The same day the contempt motion was denied, the District Court without notice, without a hearing and without a request therefore, issued a sua sponte permanent injunction barring Petitioner's counsel form filing any new papers in the consolidated Chapter XI's, save for those which would aid in the pending appeals.

On October 29, 1979, oral argument was heard in the Court of Appeals on the appeals of the District Court's sua sponte permanent injunction and the denial of the contempt motion. Gilbert S. Rosenthal, Esq., the recipient of the New York State Bar Association's Criminal Lawyer of the Year Award for 1979, appeard "Of Counsel" to Petitioner's counsel on the appeal of the injunction, in which it was urged that the District Court's Order contained knowingly flase statements.

The Court of Appeals unamimously reversed the order imposing the sua sponte permanent injunction, and remanded for a hearing as to whether and to what extent an injunction should issue.* The Court in a companion order affirmed the denial of the motion for orders of contempt.

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*Petitions For Writs of Certiorari from both these orders were prepared, but will not be filed, given the Supreme Court's recent denials of related Petitions. Filing additional Petitions appears to be a waste of time and money, as the Supreme Court has shown a disinclination to come to grips with questions involving obvious judicial misconduct.

II. THE FACTS UNDERLYING THIS PETITION

A search of the Bankruptcy Court files on November 9, 1978 yielded a series of correspondence going back to April 1978, among the Bankruptcy Court, Respondents' counsel and Thomas H. Magid, a representative of the minority shareholders, who are the brothers and sister of the President of Respondent corporations.

In his letters to the Bankruptcy Court, Thomas Magid advised the Court that four pending law suits against the corporations and its officers, one of which was a shareholders' derivative action charging the officers with fraud, mismanagement, conversion and waste, had been omitted from the Petitions, Schedules and Statements filed in the Chapter XI, and that the law suits were apparently concealed from the creditors and the Court.

The Bankruptcy Court referred the minority shareholders' letters to Respondents' counsel, who advised that the Court had entered an order several years earlier confirming the Chapter XI's and that the Court therefore lacked jurisdiction to entertain the charges of bankruptcy fraud, etc. The Court, after receiving a copy of Respondents' counsels' letter addressed to Thomas Magid, sent its own letter concurring in Respondents' counsels' advices.

After contacting the representative of the minority shareholders, and upon receiving additional information and documentation of other acts of bankruptcy fraud, Petitioner moved to impose sanctions and to revoke the

fee awarded to Respondents' counsel eighteen days after the order of confirmation and discharge terminated the Chapter XI's. The motion was returnable on December 8, 1978.

On December 6, 1978, the Court of Appeals handed down its Per Curiam Opinion which affirmed the District Court's Memorandum and Order which in turn upheld the Bankruptcy Court's Order and Amended Order. Despite the fact that the Bankruptcy Court's Amended Order provided for post-Confirmation dollar-for-dollar commission payments to Petitioner for deliveries made to Respondent's after the Chapter XI had terminated which payments were recorded as "expenses of administration, the Court of Appeals repeated the District Court's error that no such jurisdiction was taken post-Confirmation:

> [4] Equally unfounded is appellant's contention that the bankruptcy judge erred in denying priority status to her claim for commissions as an administration expense. The record establishes that appellant has received payment in full on all deliveries made by Rudd to Hartford during the period of arrangement. If appellant believes that she has not received commissions due her on deliveries made thereafter, her remedy lies not in the bankruptcy court nor on this appeak, but in a plenary action at law. See In re

Gordon, 44 S.Supp. 581. (S.I.) N.Y. 1942); 9 Collier on Bankruptcy ¶¶8.11, 8.12 (14th ed. 1975)*

On December 8, 1978, the Bankruptcy Judge denied the motion seeking the imposition of sanctions, etc., stating that the Court was a Court of limited jurisdiction and lacked jurisdiction post-Confirmation to impose sanctions or to revoke the fee awarded to Respondents' counsel. While ignoring his order which approved the fee application after the Chapter XI had ended, the "Amended Order" which provided for payment of commissions to Petitioner earned after the date of Confirmation and Discharge and the Order of Confirmation and Discharge which specifically reserved such jurisdiction, the Court did state on the Record that it had informed the United States Attorney's Office that Respondents and their counsel had "lied". The Court further categorized the Chapter XI proceedings as a "ripoff" of everybody.

Despite citing a "lack of jurisdiction" post-Confirmation to impose sanctions on Respondents' counsel, the Court, in a pique of anger, turned around and imposed

*On October 1, 1979, the Supreme Court entered an order denying Petitioner's Petition for a Writ of Certiorari in Case No. 79-178 and thereby left standing the Court of Appeals Per Curiam Opinion, despite the voluminous documentation detailing this error, and numerous others.

sanctions on Petitioner's counsel for bringing the motion to impose sanctions on Respondents' counsel.

On December 21, 1978, Petitioner returned to the District Court on the motion for contempt against Respondent's counsel and additional motions seeking to have the District Court vacate its original Memorandum and Order which was affirmed by the Per Curiam Opinion. While the Court continued the contempt motion for a hearing at a later date, it refused to vacate its original order. But the Court did acknowledge its awareness that the Bankruptcy Court in its Amended Order had in fact provided for post-Confirmation commission payments to Petitioner, in the following exchange:

> MR. SHUFFMAN: Your Honor under Smith v. Pollen adopted in this circuit by Ryan v. United States Lines, this court does have the duty to move in the Court of Appeals for a remand now that it knows its own affirmance was in error.
>
> THE COURT: I don't know that. They tell me that it's not in error. I don't know that there is any action by this court that is in error.
>
> MR. SHUFFMAN: Your Honor stated that you did not take jurisdiction for a period of post-Confirmation, yet you ordered the appellant paid monies post-Confirmation.

THE COURT: That is what the bankruptcy judge ordered.

On January 9, 1979, the Bankruptcy Court denied Petitioner's motion to rehear the December 8, 1978 Order, again citing lack of jurisdiction to do anything post-Confirmation. The Court also stated on the Record that Petitioner did not retain as her consultant Emphraim Leibowitz, Esq., the Bankruptcy expert whose column on Bankruptcy Practice is a regular feature on Page 1 of the New York Law Journal. Documents proving that Leibowitz was in fact retained were already on file in the Court of Appeals, together with a partial list of those "findings of fact and conclusions of law" which he found to be "clearly erroneous." Leibowitz also concurred in the fact that the proceedings in the Bankruptcy Court were marred by numerous acts of wrongdoing.

The Bankruptcy Judge, who at the time of the hearing was a member of the faculty for several seminars on the new Bankruptcy Reform Act which had as its faculty co-chairman the two senior partners of Respondents' counsels' law firm in charge of the Chapter XI's, finished the hearing by imposing a $50 fine for contempt upon

Petitioner's counsel.* The Court then appointed Respondents' counsel to represent the United States on the appeal of the contempt order even though it had filed a complaint against respondents' counsel with the United States Attorney's Office.**

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*On October 3, 1979, Melvin Wulf, Esq., a former director of the Civil Liberties Union and presently a partner of former Attorney General Ramsey Clark of Clark, Wulf, Levine & Peratis, which had been retained to represent Petitioner's counsel on the Bankruptcy Court's orders imposing both sanctions and contempt, argued in favor of the disqualification of Respondents' counsel citing what he termed the "serious charges" of wrongdoing pending against both the Bankruptcy Court and Respondents' counsel. This Appeal is presently being briefed in the District Court, wherein one of the issues presented raises the "clearly erroneous" posture of the Court of Appeals Per Curiam Opinion. Unless reversed, this Appeal will ultimately reach the Supreme Court.

An appeal of the denial of the disqualification motion is presently sub judice in the Court of Appeals. The proceedings in the District Court have been stayed pending disposition of the appeal on the issue of disqualification.

**A recent Ethics Opinion of the Committee on Professional and Judicial Ethics of the Association of the Bar of the City of New York has held such representation, involving a potential conflict, to be a violation of the Code of Professional Responsibility.

SUMMARY OF THE ARGUMENT

In Reading Company v. Brown, 88 S.Ct. 1759 (1968), this Court indicated that certiorari will be granted where there is presented an important issue of first impression dealing with the administration of the bankruptcy laws. The case at bar, it is respectfully submitted, falls squarely within this criteria because it deals with:

(1) a question of law -- yet to be settled by this Court, as to whether fee applications in bankruptcy are administrative in nature, and therefore subject to review while the estate is still open [See, In re India Wharf Brewery, Inc., 96 F.2d 710 (2nd Cir., 1938); See, also Hume v. Myers, 242 F.827 (4th Cir., 1917)];

(2) another question of law -- also yet to be settled by this Court, as to whether or not a Court has a duty to revoke fees awarded to counsel in a bankruptcy proceeding, when it is discovered that said counsel "lied" and breached their fiduciary duty to the Court and creditors by withholding material information and deliberately misrepresenting other material facts [See, In re Arlan Dep't Stores, Inc., ___F.2d____, (2nd Cir. 1979); See, also Governor Clinton Co. v. Knott, 120 F.2d 119 (2nd Cir., 1941); and General Order in Bankruptcy 44 (superseded by Bankruptcy Procedure Rule 215];

(3) the question of whether appeals from denials of motions to reargue are appealable for an abuse of discretion [See, Browder v. Director, Ill. Dept. of Corrections, 434 U.S. 257, 263 n. 7 (1978); Federal Land

Bank of Springfield et al. v. Hansen, 113 F.2d 82 (2nd Cir., 1940); In re Jayrose Millinery Corp., 93 F.2d 471 (2nd Cir., 1937); In re F. Hurley, Inc., 612 F.2d 392, (8th Cir., 1980)];

(4) the question of whether technical requirements in a Notice of Appeal may be waived by the District Court, when the Brief makes clear that the appeal is directed to both the original order and the order denying reargument, where no prejudice will result to Respondents therefrom, and where a narrow interpretation of the Notice of Appeal, limiting it to the denial of reargument only may result in a violation of an important principle of public policy [See, Bankers Trust Co. v. Mallis, 435 U.S. 381 (1981); See also Reading Company v. Brown, 88 S. Ct. 1759 (1968)];

(5) whether a Court of Appeals may refuse to take judicial notice of its own prior orders and that of the lower Courts, resulting in clearly erroneous and contradictory findings and conclusions in its Per Curiam Opinion, contrary to Brown v. Board of Education, 344 U.S. 1 (1952), United States v. United States Gypsum, Co. 333 U.S. 364 (1948) and Article III of the Constitution;

(6) another question of law -- yet to be determined by this Court, as to whether a Court of Appeals abuse its discretion by refusing to take judicial notice of the Bankruptcy Court's findings and conclusions that Respondents and their counsel engaged in conduct in violation of 18 U.S.C. §152, and whether the doctrine of judicial

estoppel applies to Courts [See, Chicago Deposit Vault Co. v. McNulty, 153 U.S. 554 (1894)];

(7) the duty of this Court to take judicial notice of the Record below, and to vacate an order which was predicated upon a "fraud on the Court" and which perpetuates a fraud and an injustice, pursuant to Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944) and Pepper v. Litton, 308 U.S. 295 (1939).

(8) another question of law -- yet to be settled by this Court -- as to whether articles published in newspapers alleging judicial and official misconduct, which are attributed to official government sources, constitute prima facie evidence of wrongdoing to require an evidentiary hearing on the question of recusal for bias and prejudice pursuant to 28 U.S.C. 455 [See, In re Grand Jury Investigation (Bert Lance), 610 F.2d 202 (5th Cir., 1980)];

(9) whether a Court of Appeals may award "double costs" pursuant to 28 U.S.C. §1912 and Rule 38 of the Federal Rules of Appellate Procedure to a party found to have engaged in violations of 18 U.S.C. §152, or whether such an award constitutes a clear departure from the accepted and usual course of judicial proceedings as to call for an exercise of the Supreme Court's supervisory powers under Rule 19 of the Rules of the Supreme Court;

(10) another question of law -- never before presented to this Court, but which should be settled by this Court, as to

whether an attorney may be enjoined or threatened with an injunction barring further filings in a proceeding, which is in effect tantamount to disbarment, in violation of the First and Fifth Amendments quarantees, and in further violation of the client's First and Fifth Amendment guarantees, and Sixth Amendment right to be represented by counsel; and

(11) substantive due process questions in the administration of the bankruptcy laws as to whether the proceedings below, taken as a whole, are contrary to the Article III duty to honestly administer justice.

As a result, we respectfully submit, the case at bar justly warrants the granting of this petition, which will undoubtedly clear up ambiguities in the administration of the bankruptcy laws and the clouds surrounding the administration of justice in general, as reportedly extensively in the media.

ARGUMENT

Rule 19 of the Rules of the Supreme Court states in part, that:

> 1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor.

The Rule continues by listing the character of reasons which will be considered, including:

> (b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state of territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision. (underscoring provided)

The case at bar, it is respectfully submitted, falls squarely within the above enumerated criteria because it presents a situation where the Courts below, having made numerous clearly identifyable errors, have refused to correct same, and have instead embarked upon a kafka-esque course where such errors are relied upon, expanded upon and compounded in violation of the Article III duty to honestly administer justice.

The actions of the Court below have spawned more than a dozen newspaper exposes, the most recent of which appeared in the Gannett Newspapers. Under the headline "Attorney charges judicial Watergate,'" Gannett reported:

> The judges, whom Shuffman accuses -- on the court record and to their faces -- of conspiring to cover-up careless legal errors and making an "accomodation" to a powerful law firm, are members of what has been referred to as "the crown jewel" of the federal court system, often regarded as one of the most prestigious of all U.S. courthouses.

In defense of his claims against the courts, Shuffman argues and provides ample documentation to prove that: He was denied a full hearing by the U.S. Bankruptcy Court from which his lengthy case evolved; a secret meeting between U.S. Bankruptcy Judge Roy Babitt and Shuffman's adversaries was held to settle the original bankruptcy case in apparent violation

of court procedure; a staff attorney for the U.S. Court of Appeals altered a decision creating a snafu and blocking the court's intended resolution of the case; evidence exists that before a U.S. Court of Appeals panel voted to deny a Shuffman motion before a hearing had been held on the matter; and that Shuffman's adversaries filed false petitions in bankruptcy court.

A. The award of counsel fees in bankruptcy is an administrative matter, subject to review and revocation until the estate is closed.

Petitioner urges that an award of counsel fees in bankruptcy is an administrative matter, subject to review and revocation while the estate is still open. [In re India Wharf Brewery, Inc., 96 F.2d 710 (2nd Cir., 1938); Hume v. Myers, 242 F. 827 (4th Cir., 1917)].

Assuming, arguendo, that counsel fees are not administrative in nature, they are still reviewable where, as in the case at bar, jurisdiction over such fee applications was specifically reserved in the Order of Confirmation and Discharge and in the Plan of Arrangement. This is clear in the case at bar where said fee application was approved Post-Confirmation and Discharge, and where the estate has not yet closed.

The Bankruptcy Court's ruling that it lacked jurisdiction Post-Confirmation to revoke the fee it awarded Post-Confirmation is "clearly erroneous."

B. Counsel fees, once awarded, must be revoked where the Court has found that counsel has breached its fiduciary duty and engaged in conduct in violation of 18 U.S.C. § 152.

Counsel fees may not be awarded to attorneys who have breached their fiduciary duty and have engaged in conduct in violation of 18 U.S.C. §152. [In re Arlan Dep't stores, Inc., ___F.2d___ (2nd Cir., 1979); Governor Clinton Co. v. Knott, 120 F.2d 119 (2nd Cir., 1941); and General Order 44].

On October 25, 1978 the Bankruptcy Court directed that a Complaint be filed against Respondents and their counsel with the United States Attorney pursuant to 18 U.S.C. §3057, charging violations of 18 U.S.C. § 152. On December 8, 1978, the same Court reiterated on the Record that it had already told the U.S. Attorney that counsel and their client had "lied", and that the Chapter XI proceedings were a "ripoff" of everybody.

The Bankruptcy Court breached its duty and abused its discretion in failing to revoke the counsel fee awards.

C. Orders denying motions to "reargue" are reviewable for "an abuse of discretion".

The denials of motions to reargue are reviewable for an abuse of discretion. [Browder v. Director, Ill. Dept. of Corrections, 434 U.S. 257,263 n. 7 (1978); In re W. F. Hurley, Inc., 612 F.2d 392 (8th Cir., 1980); Federal Land Bank of Springfield v. Hansen, 113 F.2d 82 (2nd Cir., 1940)].

The District Court, in its order dismissing the appeal on motion without allowing the appeal to proceed on the merits, by categorizing it as an appeal from a denial of a motion to reargue, failed to consider whether the Bankruptcy Court's denial of the reargument motion, apart from the merits of the denial of the original order, constituted an abuse of discretion.

This "double whammy" was especially prejudicial to Petitioner because (1) the Court acknowledged during argument that the inarticulately drawn Notice of Appeal included both the original order and order denying reargument; (2) the Brief specifically denominated both orders as being appealed; and (3) no prejudice would result to Respondents based upon a waiver of technicalities. [Bankers Trust Co. v. Mallis, 435 U.S. 381 (1978).]

Further, said narrow interpretation given the Notice of Appeal closed the door to any review of the counsel fee award, coming as it did on top of the Bankruptcy Court's holding of an alleged "lack of jurisdiction" to entertain the application to revoke the fee award. Because of the

important public policy questions inherent in rewarding an attorney for violating the law, Petitioner respectfully submits that a broader reading and interpretation should have been given to the Notice of Appeal rather than preclude altogether the revocation of the counsel fee award. [Reading Company v. Brown, 88 S. Ct. 1959 (1968)].

D. The Court of Appeals abused its discretion in failing to take judicial notice of its own orders, resulting in several clearly erroneous findings.

In its haste to affirm the District Court's order dismissing the appeal, the Court of Appeals abused its discretion by failing to take judicial notice of its own prior orders [Brown v. Board of Education, 344 U.S. 1 (1952); Barr Rubber Products v. Sun Rubber Co., 425 F.2d 1114 (2nd Cir., 1970), cert. denied, 400 U.S. 878 (1970); Matter of Gervich, 570 F.2d 247,253 (8th Cir., 1978)].

As such, the Court of Appeals made several statements and findings which were "clearly erroneous" as a matter of law [United States v. United States Gympsum Co., et al. 333 U.S. 364 (1948)] and raises and even greater question as to whether the Court of Appeals breached its Article III duty to honestly administer justice.

This is especially important because, in its Per Curiam Opinion: (1) the Court went to great lengths to include an Appendix which recited the various motions, appeals and orders it had entered; (2) the Court then awarded Respondents "double costs", (3) the Court threatened to enjoin

both Petitioner and her counsel from any further filings which it deemed meritless, repetitive or, frivolous; (4) the Court's Opinion demonstrates a complete and utter lack of familiarity with its own rulings, that of the lower Courts, and the case in general; and (5) various media, including the Gannett Newspapers, have concluded in responses to Petitoner's charges of wrong-doing, that:

> The judges, whom Shuffman accuses -- on the court record and to their faces -- of conspiring to cover-up careless legal errors and making an "accomodation" to a powerful law firm, are members of what has been referred to as "the crown jewel" of the federal court system, often regarded as one of the most prestigious of all U.S. courthouses.
>
> In defense of his claims against the courts, Shuffman argues and provides ample documentation to prove that: He was denied a full hearing by the U.S. Bankruptcy Court from which his lengthy case evolved; a secret meeting between U.S. Bankruptcy Judge Roy Babitt and Shuffman's adversaries was held to settle the original bankruptcy case in apparent violation of court procedure; a staff attorney for the U.S. Court of Appeals altered a decision creating a snafu and blocking the court's intended resolution of the case; evidence exists that before a U.S. Court of Appeals panel voted to

> deny a Shuffman motion before a hearing had been held on the matter; and that Shuffman's adversaries filed false petitions in bankruptcy court.

E. The doctrine of judicial estoppel should be made applicable to courts.

In Chicago Deposit Valult Co. v. McNulta, 153 U.S. 554 (1894), this Court raised the question, but then left unanswered, whether the doctrine of judicial estoppel applies to Courts.

The case at bar, it is respectfully urged, presents the perfect opportunity to answer this heretofore unanswered question. The reason for this is that all three opinions, including those of the Bankruptcy Court, the District Court and Court of Appeals in In re Hartford Textile Corporation, 588 F.2d 872 (2nd Cir., 1978), cert denied, 100 S.Ct. 146 (1979) contradict each other in their recitation of the facts and in their conclusions of law, yet each is supposed to affirm the other.

Moreover, since the Court of Appeals December 6, 1978 Opinion, the Bankruptcy Court has repudiated the underlying conclusions in his original orders and denied applications for relief, such as the one for the imposition of sanctions, etc. for an alleged "lack of jurisdiction" Post-Confirmation, citing the Second Circuit's affirmance in which it held:

> Equally unfounded is appellant's contention that the bankruptcy judge erred in denying priority

> status to her claim for commissions as an administration expense. The record established that appellant has received payment in full on all deliveries made by Rudd to Hartford during the period of arrangement. If appellant believes that she has not received commissions due her on deliveries made thereafter, her remedy lies not in the bankruptcy court nor on this appeal, but in a plenary action at law. See In re Gordon, 44 F. Supp. 581 (S.D.N.Y. 1942); 9 Collier on Bankruptcy ¶¶8.11, 8.12 (14th ed. 1975).

Of course, the Record is clear that the monies awarded to Petitioner in the Bankruptcy Court's Amended Order of August 26, 1977, provided Petitioner with an additional $3,346.17 as expenses of administration from September 5, 1974, the date of Confirmation and Discharge, until December 31, 1974. This was reported by Gannett as follows:

> At the re-hearing Weil Gotshal reversed its previous position and admitted that after the new contract was established, Hartford had privately recognized Shuffman's finder's fee. David Shuffman proved this by presenting the court with Hartford's checks to Shuffman for his percentage on deliveries made after the new contract was in force.
>
> While arguing that Oscar Shuffman had no legally enforceable position in the new contract, the Weil Gotshal attorney, with

> Babitt's immediate approval, agreed to pay $3,346.17 to the Shuffman estate, recognizing his finder's fee for deliveries made through to the end of 1974. (underscoring provided)

Had the doctrine of judicial estoppel been applicable to Courts, the Bankruptcy Judge would not have been able to repudiate his own prior order, in apparent violation of his Article III responsibilities. Moreover, the Court of Appeals would not have been placed in the embarrasing position of rendering an opinion which simply is not true, and which many have come to believe is simply one more round of accomodations to a powerful law firm.

In addition, the Supreme Court would not have been placed in the position of rubber stamping, through the denial of certiorari, a fraud and an injustice. If the doctrine of judicial estoppel were made applicable to Courts, instances of judicial misconduct would decrease.

F. The Court has a duty to correct the results of a fraud and an injustice based upon a "fraud on the Court" by one of its officers.

> Pepper v. Litton, 308 U.S.295 (1939); 8 Collier On Bankruptcy, 14th ed., Sec. 315 Hazel-Atlas Glass Co. v. Hartford Empire Co. 322 U.S. 238 (1944).

G. Newspaper accounts of official and judicial misconduct, attributed to confidential government sources, constitute prima facie evidence of the charges, necessitating an evidentiary hearing on the question of recusal for bias and prejudice pursuant to 28 U.S.C. § 455.

In re Hartford Textile Corp. has become one of the most extraordinary cases in recent judicial history, both for the incordinate amount of en banc orders (fourteen as of the date of oral argument on the appeal below contrary to the twenty-three as stated in the Per Curiam Opinion), and because of the increasing amount and tone of press coverage.

Recently, the Fifth Circuit in the Bert Lance case, In re Grand Jury Investigation, 610 F.2d 202 (5th Cir., 1980), held that published reports of official misconduct attributed to confidential government sources constituted prima facie evidence to warrant an evidentiary hearing into the charges.

Given the contradictory nature of the opinions thus far, recent newspaper reports of judicial and official misconduct in the Hartford case, attributed to sources both within the Court of Appeals and the U.S. Attorney's Office, fall squarely within the parameters of the Lance decision necessitating an evidentiary hearing into the question of bias and prejudice. One such report, published in OUR TOWN a respected Manhattan weekly, reads, in pertinent part, as follows:

Hartford Bazaar

With one short sentence, the U.S. Supreme Court, On Oct. 1, 1979 gave its official o.k. to a gorgeous fix and coverup in the case of Hartford Textiles Inc. The Court gave its official stamp of approval to a case fixed by Bankruptcy Judge Roy Babitt and subsequently covered up by half the judges in the Federal Courthouse in Foley Square. In a letter to East Side Lawyer David Shuffman, the Supreme Court said: "The Court today entered the following order in the above-entitled case;: The petition for a writ of certiorari is denied.

. . .

At Home In The Inquisition

Three weeks ago we reported that a remarkable twelve en banc orders, signed by every judge in the Second Circuit, had already descended on Shuffman's head. Since that time, two more have been issued. According to the Federal Rules of Appellate procedure regarding en banc reviews, Hartford Textiles, Inc. . . the Shuffman case, is now the most exemplary case in the history of local federal courts.

Recent disclosures may help explain why. According to a reliable source, inside Judge Irving Kaufman's chambers, continuous secret meetings

were held ten months ago to decide how to handle Shuffman. Present at these meetings, reportedly, were members of the Weil, Gotshal firm. (underscoring provided).

Under the recent ruling by the Fifth Circuit, a sufficient basis has been established to require an evidentiary hearing into the charges of bias, prejudice and the appearance of impropriety.

H. The awarding of "double costs" to Respondents constitutes a clear abuse of discretion.

The awarding of "double costs" to Respondents constitutes a clear reversal of the old saw that "crime does not pay", As such it represents a clear abuse of discretion.

Having perpetrated a "fraud upon the Court" through the filing of false petitions, schedules and affidavits, Respondents are no more entitled to an award of "double costs" than they are to an award of attorneys' fees. In re Arlan Dep't Stores, Inc., ___F2d ___, (2nd Cir., 1979); Governor Clinton Co. v. Knott, 120 F.2d 119 (2nd Cir., 119).

I. The Second Circuit's threat of an injunction barring the filing of future papers constitutes a clear departure from the accepted and usual course of judicial proceedings.

In Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944) and Pepper

v. Litton, 308 U.S. 295 (1939), this Court indicated that it was the duty of all Courts to prevent a fraud and an injustice especially where the fraud and injustice resulted from a "fraud on the Court" by one of its officers.

The Record in the Courts below is filled with glaring examples of simple legal and factual errors induced by innumerable misrepresentations by Respondents and their counsel. Petitioner's repeated efforts to undo the errors have resulted in conjuring up the repeated wrath of the Courts below upon her and her counsel, through the imposition of sanctions, contempt, disciplinary proceedings, a sua sponte permanent injunction (vacated upon appeal) and threats of other injunctions.

Petitioner has a Constitutional right to due process of law and equal protection, even though she is a widow who has gotten in the way of a large, powerful firm. Her counsel, it goes without saying, has an obligation to secure for her those Constitutional rights.

The threat of an injunction, coupled with the imposition of "double costs", simply for seeking a redress of grievances through the Courts, constitutes a serious threat and curtailment of Petitioner's and her counsel's constitutional rights. The longer it takes for the Courts to correct the fraud and injustice, the more it will appear that Article III and the Constitution have been waived and abolished by the judiciary.

According to the editor of a major publishing house with whom Petitioner is now working:

> The clippings, in tandem with your press release, certainly add up to a potential bombshell.

It is obvious that if Petitioner can not seek redress of her grievances in the Courts, she has no other alternative than to pursue other available channels. Coming as it does on the heels of The Brethren, her story will undoubtedly shock the conscience of even the hardest-nosed listener. Such is the price one must pay in defense of liberty and justice for all.

J. The Second Circuit has so far departed from the usual and accepted course of judicial proceedings, and has sanctioned such a departure by the lower courts, as to call for the exercise of this Court's supervisory power of supervision under its Rule 19.

The Supreme Court is asked to take judicial notice of the proceedings below involving the appeals of sanctions and contempt imposed by the Bankruptcy Court upon Petitioner's counsel.* Those orders were imposed upon Petitioner's counsel at the same time the Bankruptcy Court denied the motions which are the subject of the Petition at Bar.

*A Petition for Rehearing of the Order denying the disqualification of Respondent's counsel from appearing in the District Court in support of those orders is pending before the Second Circuit.

The Court directed that Respondents' counsel appear in support of those orders on the appeal, despite the Court's earlier reference of a Complaint to the U.S. Attorney based upon the Court's findings that Respondents and their counsel had "lied."

During the argument in the Court of Appeals seeking reversal of the District Court Order denying the disqualification of Respondents' counsel for conflict-of-interest, based upon the U.S. Attorney's supposed investigation, Respondents' counsel advised the Court that the U.S. Attorney had waived any possible conflict, and had told Respondents' counsel that it was fine with him if they appear on behalf of the United States to defend the Bankruptcy Court's orders.

However, a recent Opinion from the Committee on Professional and Judicial Ethics of the Association of the Bar of the City of New York has stated that dual representations such as the one below are a clear violation of Disciplinary Rule 5-105(C) and Ethical Consideration 5-15.

Undoubtedly, a Petition will ultimately reach this Court seeking a review of whether a Judge may order or sanction a violation of the Code of Professional Responsibility, and whether such violation may be upheld upon appeal.

Certainly, the first lie is the worst, because it spawns even greater deviations in order to cover it up. At this point, it is obvious that the Courts below have so far departed from the usual and accepted course of judicial proceedings as to warrant the exercise of this Court's supervisory powers.

K. Conclusion

Fee awards in bankruptcy proceedings are administrative matters subject to review while the estate is still open. The ruling below to the contrary is clearly erroneous.

Fees may not be awarded to attorneys who have violated their fiduciary duty or who have otherwise engaged in illegal or unlawful conduct. Since fees have already been awarded, they must be revoked.

The failure to revoke the fees awarded constituted an abuse of discretion. Assuming arguendo that the appeal to the District Court was from an order denying reargument only, it was still reviewable for the abuse of discretion for failure to revoke the fee. In fact, the Court had a duty to sua sponte grant the requested relief.

The decision of the Court of Appeals contains numerous mistakes of fact and law. This could not have happened if the Court had taken judicial notice of its own orders, and those of the Courts below. The failure to judicially notice the Record is a clear abuse of discretion, which has resulted in the perpetuation of a fraud and an injustice.

Application of the doctrine of judicial estoppel to Courts would significantly curtail instances of such abuse of discretion and add to the honest administration of justice. This is especially so in cases of "fraud on the Court" perpetrated by powerful and prestigious "officers" of the Court at the expense of lesser known or financially weaker litigants.

This Court has a duty to vacate orders obtained by a "fraud on the Court" perpetrated by one of its officers. Respondents and their counsel must not be permitted to profit from this wrongdoing.

Finally, articles published by Gannett and other newspapers concerning the case at bar have made it clear that the Courts have acted in a questionable manner if not in violation of their Article III responsibilities. These reports have been attributed in part to "official government" sources. Under the recent ruling in the Bert Lance case, Petitioner is entitled to an evidentiary hearing as to whether the opinions below have resulted from this reported bias and prejudice in favor of Respondents.

Under Rule 19 of the Rules of the Supreme Court, this Court is ultimately responsible for the break-down and violation of law. The Petition at bar makes that perfectly clear. Certiorari should be granted as an exercise of this Court's power of supervision.

IMPORTANCE OF THIS PETITION

This Petition presents a situation where the Court of Appeals for the Second Circuit has determined federal questions (a) inconsistent with prior rulings of this Court; (b) in conflict with rulings of other Circuits; (c) not previously determined by this Court; and (d) contrary to the Article III requirement to honestly administer justice:

(1) The Second Circuit upheld the Bankruptcy Court's ruling that fee applications were not administrative in nature, and therefore not reviewable while an estate is still open. This holding, which reverses the Second Circuit's position in In re India Wharf Brewery, Inc., 96 F.2d 710 (2nd Cir., 1938) is also diametrically opposed to the position taken by the Fourth Circuit in Hume v. Myers, 242 F. 827 (4th Cir., 1917).

(2) The Second Circuit permitted the fees awarded to counsel for the debtor-in-possession to be retained even though the Bankruptcy Court had found that said counsel had breached their fiduciary duty and had "lied" by deliberately omitting material information from the Court and creditors; and by deliberately misrepresenting material facts. This holding which reversed the Second Circuit's one month old ruling in In re Arlan Dep't Stores, Inc., ___F.2d___, (2nd Cir., 1979) and the ruling in Governor Clinton Co.v. Knott, 120 F.2d 119, (2nd Cir., 1941), and is contrary to General Order in Bankruptcy 44 (superseded by Bankruptcy Procedure Rule 215) promulgated by this Court.

(3) The Second Circuit held that appeals from denials of motions to reargue are not reviewable for an abuse of discretion in upholding the District Court's dismissal of the bankruptcy appeal (denominated as an appeal of an order denying reargument) on motion without allowing a hearing on the appeal on the merits. This holding which reverses the Second Circuit's positions taken in Federal Land Bank of Springfield, et al. v. Hansen 113 F.2d 82 (2nd Cir., 1940) is also contrary to the recent ruling of the Court of Appeals for the Eighth Circuit in In re W. F. Hurley, Inc. 612 F.2d 392 (8th Cir., 1980), and is contrary to this Court's holding in Browder v. Director, Ill. Dept. of Corrections, 434 U.S. 257, 263 n.7 (1978).

(4) The Second Circuit held that the appeal to the District Court was in fact an appeal of the Bankruptcy Court's denial of a motion to reargue, based upon the admittedly inarticulately drawn Notice despite the Brief which clearly indicated that both the original order and order denying reargument were being appealed. The holding is contrary to this Court's holding in Bankers Trust Co. v. Mallis, 435 U.S. 381 (1978), especially since no prejudice would have resulted to Respondent's based upon a broad reading and waiver of technicalities, and a narrow interpretation may result in a violation of public policy in contradiction of the holding in Reading Company v. Brown, 88 S.Ct. 1759 (1968).

(5) The Second Circuit refused to take Judicial Notice of the Record and its own prior Orders in holding that :

> By Shuffman's own count, given at oral argument on October 29, 1979, Shuffman's activities have thus far necessitated twenty-three en banc orders from this Court. --

when in fact the Record reads as follows:

> MR. SHUFFMAN: . . . In the last seven months the United States Court of Appeals has issued 14 en banc orders, an extraordinary number of en banc orders, including an order for immediate disciplinary proceedings against David K. Shuffman.

This holding is contrary to that of the Court of Appeals of the Eighth Circuit in Matter of Gervich, 570 F.2d 247 (8th Cir., 1978) and is contrary to this Court's holding in Brown v. Board of Education, 344 U.S. 1 (1952), and also results in findings which are "clearly erroneous" United States v. United States Gypsum Co., 333 U.S. 364 (1948).

(6) The Second Circuit held that it did not have to take Judicial Notice of the Record or the Bankruptcy Court's findings that Respondents' counsel had "lied," when it held that:

> At some point the principal focus of Shuffman's attacks shifted from the substance of her claim in the Chapter XI proceedings, to a plethora of unfounded charges that those proceedings were "fixed" by opposing counsel, who thereby perpetrated a "massive swindle" of the creditors...

The Second Circuit's holding is contrary to this Court's holding in Brown v. Board of Education, 344 U.S. 1 (1952) and the traditional concepts of judicial estoppel and estoppel by the Record Vol. 31, § 4 and 117(b), Corpus Juris Secundum. As such, it presents to this Court a question of law never previously decided by the Supreme Court, which ought to be decided by this Court and which was hinted at but left unanswered in Chicago Deposit Vault Co. v. McNulta, 153 U.S. 554 (1894). That question is very simply whether the doctrine of judicial estoppel applies to Courts?

(7) The Second Circuit held that it did not have a duty to take judicial notice of the Record or the duty to vacate and reverse an order based upon a "fraud on the Court" perpetrated by the debtor-in-possession and their counsel resulting in a statement in the Court's Opinion that:

> "Shuffman has never produced a shred of evidence to substantiate her scandalous changes; they can most charitably be termed "fanciful."

The Second Circuit's refusal to judicially notice the Record is contrary to this Court's ruling in Brown v. Board of Education,344 U.S. 1 (1952), and, in addition, violates this Court's dicta in Pepper v. Litton 308 U.S. 295 (1939) (jurisdiction to prevent a fraud and an injustice) and furthermore contradicts this Court's express requirements laid down in Hazel-Atlas Glass Co. v. Hartford Empire Co. 322 U.S. 238 (1944).

(8) The Second Circuit held that applications for relief based upon "fraud on the Court" were "meritless, frivolous filings" without ever allowing an evidentiary hearing into the allegations of "fraud on the Court" or judicial misconduct on the part of the Bankruptcy Court, as reported by Gannett Newspapers, the Associated Press and others. This holding is contrary to the recent Fifth Circuit holding in In re Grand Jury Investigation (Bert Lance), 610 F.2d 202 (5th Cir., 1980), in which the Court held that articles alleging criminal wrongdoing, attributed to official sources, constituted prima facie evidence requiring an evidentiary hearing. As such, it presents to this Court a question of law never before presented to the Supreme Court, which should be determined by this Court.

(9) The Second Circuit held that:

> We would be remiss if we continued much longer to allow valuable time to be diverted from the legitimate work of the court to the frivolous motions and appeals of Shuffman. We consider the present appeal, as well as those in Nos. 79-5036 and 79-5044, to be entirely frivolous, and we award appellees double their costs in connection with these matters. 28 U.S.C. §1912 (1976); Fed. R. App. p. 38.

At the same time, the Gannett Newspapers published an article entitled "Attorney charges 'judicial Watergate'", in which

Gannett reported:

> The judges, whom Shuffman accuses - on the court record and to their faces - of conspiring to cover-up careless legal errors and making an "accomodation" to a powerful law firm, are members of what has been referred to as "the crown jewel" of the federal court system, often regarded as one of the most prestigious of all U.S. courthouses.
>
> In defense of his claims against the courts, Shuffman argues and provides ample documentation to prove that: He was denied a full hearing by the U.S. Bankruptcy Court from which his lengthy case evolved; a secret meeting between U.S. Bankruptcy Judge Roy Babitt and Shuffman's adversaries was held to settle the original bankruptcy case in apparent violation of court procedure; a staff attorney for the U.S. Court of Appeals altered a decision creating a snafu and blocking the court's intended resolution of the case; evidence exists that before a U.S. Court of Appeals panel voted to deny a Shuffman motion before a hearing had been held on the matter; and that Shuffman's adversaries filed false petitions in bankruptcy court. --

In view of the above, it presents to this Court a question of law falling squarely within Rule 19 of the Rules of the Supreme Court subsection with regard to the limits

of a Court's departure from the accepted and usual course of judicial proceedings, to wit: Whether a Court of Appeals may award "double costs" under 28 U.S.C. § 1912 and Rule 38 of the Federal Rules of Appellate Procedure to a party which has engaged in conduct in violation of 18 U.S.C. § 152?

(10) The Second Circuit further held that:

> We further advise Shuffman and her attorney that any further frivolous, vexatious or repetitious motions may well result in the Shuffman's being ordered to show cause why they should not be enjoined from filing any further papers with this Court, with whatever exceptions may be appropriate, in connection with the Chapter XI proceeding underlying these appeals.

As such the Second Circuit presents to this Court a question of law, again under Rule 19 of the Rules of the Supreme Court, never previously decided by the Supreme Court, and which ought to be determined by this Court, to wit: Whether a Court may threaten to enjoin or enjoin an attorney from filing papers in a Court, tanatamount to disbarment, and thereby violate the attorney's First and Fifth Amendment guarantees as well as the client's right to counsel?

(11) Finally, this Petition presents the Supreme Court with the penultimate question: Are the Nine Honorable Men in Washington, D.C. really honest; and if so, do they possess the courage to insure the honest administration of justice in the lower Federal Courts?

CONCLUSION

Petitioner respectfully prays that the petition for a Writ of Certiorari be granted.

Respectfully submitted,

DAVID K. SHUFFMAN
Attorney for the
Petitioner
14 East 60th Street
New York, New York 10022
(212) 755-0006

New York, New York
May 1, 1980

APPENDIX A

OPINION OF THE BANKRUPTCY COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

In the Matter of

HARTFORD TEXTILE CORPORATION,

Debtor.

No.73B
674/5/6

United States Court House
Foley Square, N.Y.,N.Y.

December 8, 1978
11:00 o'clock a.m.

MOTION FOR SANCTIONS AND ATTORNEYS' FEES

Before:

HON. ROY BABITT,

Bankruptcy Judge

Barry W. Rayvid
Official Court Reporter
U.S. Courthouse (R.202)
Foley Square, New York
New York 10007

A P P E A R A N C E S :

DAVID K. SHUFFMAN, ESQ.
Attorney for the Appellant
14 East 60th Street
New York, New York

WEIL, GOTSHAL & MANGES, ESQS.
Attorneys for the Debtor
767 Fifth Avenue
New York, New York

BY:
BRUCE ZIRINSKY, ESQ.,
Of Counsel

- - -

P R O C E E D I N G S

MR. SHUFFMAN: This is a motion to impose sanctions and attorneys' fees upon the law firm of Weil, Gotshal & Manges for conspiring with their client to file a false petition in bankruptcy.

We have annexed as exhibits to our moving papers copies of the affidavits of the president of the debtor corporation, Robert Magid, stating affirmatively no lawsuits were pending against the debtor corporation the day the petitions were filed.

THE COURT: That has been referred to the United States Attorney?

MR. SHUFFMAN: Yes, it has, in addition to the other complaints.

THE COURT: They have all been referred?

MR. SHUFFMAN: Yes, sir. That has nothing to do with the imposition of sanctions upon a law firm for conspiring with their client to file deliberately false petitions.

THE COURT: I saw all your latest correspondence, and Mr. Block invited you not only to send all you had but send him whatever you come up with.

MR. SHUFFMAN: Absolutely.

THE COURT: I wanted to be sure we are not now talking about further matters within this court to refer the matter to the United States Attorney for prosecution.

MR. SHUFFMAN: Whatever is in the United States Attorney's office is in the United States Attorney's office. Whatever we have in this court we believe belongs here.

THE COURT: My only problem, Mr. Shuffman, and I just want to make it plain for the record because I am well-aware how people hear things differently -- I am not a Court of general jurisdiction, let's understand that. I acknowledge your ingenuity in all of the things you do for your client, but there are certain things you may not be aware of, so if you will sit down I will try to explain them.

This is a Court of non-general jurisdiction. My jurisdiction is spelled out by Congress. That is all I can do. I can't divorce people, I can't evict people from

premises. There are lots of things I can't do.

Now, in the scheme of a Chapter XI case this case was confirmed, I think, how many years ago?

MR. ZIRINSKY: 1974, Your Honor.

THE COURT: What I could do after confirmation in respect of things like fraud and the like I can only do within the limitations that Congress gave me. Whether they did not wisely is besides the point. There is nothing in respect of that confirmation order which you are addressing yourself to that I can do now.

MR. SHUFFMAN: Yes, we are addressing ourselves to that order.

THE COURT: There is nothing I can do to set it aside.

MR. SHUFFMAN: No.

THE COURT: But something else happens the moment there is an order of confirmation. The property of the debtor in possession reverts in the debtor. He becomes a new entity, he becomes what he was before the filing, as the Court of Appeals reminded us at least three or four items in the last couple of years -- Unishops, Kevin Steel, and the like.

If you have a dispute with this debtor now, why don't you sue him? Somebody wrote to me a few months ago, I forget the name, and I said get yourself an SEC lawyer, I have no jurisdiction over mergers or any-

thing and I hope he took my advice because if things have been done wrong, let the appropriate tribunal correct them.

MR. SHUFFMAN: If I might, Your Honor --

THE COURT: I am just not appropriate. As far as these people, you can refer them to the Bar Association, you can do anything you want, you can sue Mr. Zirinsky personally, you can sue the firm personally, you can do anything you want. I just haven't got the power to do these things, not that I say they shouldn't be done, not that I say they should. I have very limited jurisdiction.

The only jurisdiction I have in a Chapter XI after confirmation is to dispose of claims. The Court of Appeals the other day affirmed the last dispute that remains open in this case respecting a claimant. I really don't know what you want me to do because anything I do is illegal.

MR. SHUFFMAN: Your Honor, if I might, I will tell you exactly what you can do.

THE COURT: Please.

MR. SHUFFMAN: Based upon the Supreme Court dictum laid in Pepper versus Litton, a Bankruptcy Judge always has continuing jurisdiction after a confirmation to prevent a Fraud and injustice. We have provided you with certified copies of meetings wherein the brother and sister of the debtor corporation have now come forward to show that the petitions that were filed in the bankruptcy proceeding were false and every

creditor in this proceeding has been defrauded; that, in fact, information has been kept form the creditors, concealed from the creditors and, in fact, assets are alleged to have been concealed from the creditors.

Now, under other cases this Court does have jurisdiction if there are assets which have been unaccounted for; this Court does have jurisdiction.

THE COURT: Tell me what provision of the Bankruptcy Act do you send me to. Start with the statute.

MR. SHUFFMAN: Pepper versus Litton --

THE COURT: Don't tell me about Pepper v. Litton. That deals basically with the powers of a Court.

MR. SHUFFMAN: Under 11(11) that is right, sir.

THE COURT: I want to know the authority you think I have given me by Congress to do three or four years after confirmation all of these things which maybe in justice should be done. The issue here is not whether they should be done, it's a question who should do them.

MR. SHUFFMAN: Title 11 of the United States Code, Section 11 --

THE COURT: 11(11)?

MR. SHUFFMAN: Right.

THE COURT: The injunctive power?

MR. SHUFFMAN: Giving the Court the power to do whatever is necessary to see that justice be done in an American court and in a court of law. Your Honor has opted not to do so despite the knowledge -- I have seen your letter to Tom Magid who represents one of the minority stockholders. The minority stockholders were never informed of these bankruptcy proceedings.

THE COURT: I asked Mr. Magid to secure SEC counsel.

MR. SHUFFMAN: I was with Mr. Magid at the Securities & Exchange Commission or the Attorney General's office of the SEC office.

We were also at the Internal Revenue Service at the Intelligence office wherein he provided the Internal Revenue Service with the information indicating there has been quite possibly a massive tax fraud conducted by the debtor, again with the aid of their attorneys, throughout these proceedings. They have been paid for commiting the same type of crime that men are on trial upstairs for in a very celebrated case and Your Honor has ordered them paid for commiting those crimes. We have asked you to revoke that fee on more than one occasion. You have failed to do your duty.

THE COURT: That is not the first time you will have accused me of either failing to do it or doing it incorrectly.

MR. SHUFFMAN: That is correct.

THE COURT: Now I am talking about

power. As far as defrauding the Internal Revenue Service I cannot think of an agency more likely to protect itself better than the Internal Revenue Service.

MR. SHUFFMAN: Absolutely.

THE COURT: I don't know what it is you think I can do in respect of imposing sanctions on Weil, Gotshal & Manges and in essence fix, surcharge them, I guess you mean, for all of the unpaid claims of creditors above, what they got.

MR. SHUFFMAN: Absolutely. We are seeking an order from this Court making creditors whole based upon the fact that Weil, Gotshal & Manges conspired with their client to file false petitions in bankruptcy which kept material facts from the creditors.

THE COURT: Let's separate ourselves, Mr. Shuffman, and I am not discounting anything you say. It seems to me since the property is already revested in the debtor under Section 701 of the Act, let all of these people who have been injured by this fraud being a suit against the debtor in the appropriate forum unfettered by the rather narrow jurisdictional limitations this Court is given. That is number one.

MR. SHUFFMAN: I believe the statute states that the power is in the Bankruptcy Court and this is the appropriate forum.

THE COURT: Number two, as far as doubling the sanctions for a vilification of the Court's processes, everyone has done his own vilification here.

Number three, if these people have conspired to perpetuate a fraud on this Court by being a party to the giving of a perjurious document, the matter has already been referred to the United States Attorney the last time you were here. I don't see why you would need a second motion to do what you have been directed to and have done.

MR. SHUFFMAN: This motion does not seek to send this case to the United States Attorney.

THE COURT: You spoke about a conspiracy between counsel and these people to file false oaths in bankruptcy.

MR. SHUFFMAN: You are holding the document to show that the petitions that were filed in this case were false and fraudulent.

THE COURT: You cannot expect me to go through these (indicating) and make a snap judgment now.

MR. SHUFFMAN: No. I expect you to read one simple sentence in Paragraph 5 of the affidavit of the president of the debtors.

THE COURT: Show it to me. Which page?

MR. SHUFFMAN: Sir, I believe if you take a look at Exhibit "B" or Exhibit "A" --

THE COURT: Which one first?

MR. SHUFFMAN: "A" or "B," Paragraphs 5 in both. If I may read for the record, this is from Exhibit "B".

THE COURT: You just sent me to "A". You want me now in "B"?

MR. SHUFFMAN: Yes, sir. This is the affidavit under Bankruptcy Rule XI-2 for Wellington Printworks signed by Robert P. Magid, the president of Wellington Printworks:

"No actions have been commenced against the debtor or its property. A purported creditor of the debtor, however, Rudd Plastics Corporation, has threatened to commence an action in connection with Wellington, an alleged breach of contract seeking damages in the sum of thirty-two thousand six hundred one dollars and seventy-four cents for goods sold and delivered. Upon information and belief Wellington not only has a valid defense" --

THE COURT: I thought it said Hartford.

MR. SHUFFMAN: This is Exhibit "B", sir.

THE COURT: I am in the wrong exhibit. Okay, just a minute. Okay.

MR. SHUFFMAN: "Upon information and belief Wellington not only has a valid defense to said action but also has a counterclaim for breach of contract. There are no judgments pending or threatened against the debtor or its property."

EXHIBIT "A" is the affidavit under Bankruptcy Rule XI-2 in Hartford Textile Corporation, another debtor.

THE COURT: What paragraph?

MR. SHUFFMAN: Again Paragraph 5. This is the affidavit of Robert P. Magid, president of Hartford Textile Corporation. Paragraph 5 is an affidavit which says:

> "The following action has been commenced against the debtor, but the debtor's time in which to answer the complaint therein has not yet expired ...Ampacet Corporation versus Oxford Chemical, et al, Supreme Court of the State of New York, judgment sixty-six thousand seven hundred ninety-four dollars and forty-eight cents sought for goods sold and delivered. In addition, another purported creditor of the debtor, Rudd Plastics Fabric Corporation" -- and I will stop there, and so on on Exhibits "D", "E", "F" and "G".

Exhibit "D" is a copy of a pleading of Sidney H. Magid and Rhoda Feldman Magid against Robert P. Magid, David M. Magid and Wellington Printworks, Inc.

THE COURT: That is an action that was begun by these people?

MR. SHUFFMAN: Yes, sir. They are the brother and sister of the --

THE COURT: That is ten years before the petition?

MR. SHUFFMAN: That action is still pending.

THE COURT: They may have forgotten about it.

MR. SHUFFMAN: I sincerely doubt it because it appears in the company's Dun & Bradstreet report.

THE COURT: I assume Mr. Block should be informed.

MR. SHUFFMAN: Mr. Block has been informed. I am asking Your Honor to impose sanctions on Weil, Gotshal & Manges for conspiring with their client. If you look at Exhibit "G" the same lawyers who helped the debtor and shared in the fee are the same persons who represented Robert P. Magid and the corporation in those lawsuits. Damn it, if a lawyer doesn't know what lawsuits he has to advise the Court --

THE COURT: We already told Mr. Block they lied. What do you think I can do?

MR. SHUFFMAN: Impose sanctions against the attorneys.

THE COURT: What do you believe they are:

MR. SHUFFMAN: I think sanctions equal to the percentage of creditors pre-petition.

THE COURT: If they pay ten percent I should tell Weil, Gotshal & Manges that because of this fraud they are liable for ninety percent?

MR. SHUFFMAN: Absolutely, to make the creditors whole.

THE COURT: What else?

MR. SHUFFMAN: I believe this Court should at least double the amount so determined as a penalty to the attorneys who have come into this court and conspired with their client to file false petitions in bankruptcy. The Bankruptcy Court, as you yourself have said, is a very schizophrenic area.

THE COURT: We are getting worse all the time.

MR. SHUFFMAN: That is true, Your Honor. Apparently, when I obtain certified copies of a decision from the United States Court of Appeals for the Second Circuit prior to a hearing wherein --

THE COURT: Don't quarrel with me about what arguments you have with Judge Kaufman and his court.

MR. SHUFFMAN: I believe there have been, in fact, actions to cover up the fix in this case.

THE COURT: You told that to the whole world. I am guilty, Judge Kuafman is guilty, Judge Brient is guilty. What do you think I can do today for you?

MR. SHUFFMAN: I think you can impose sanctions upon the law firm of Weil, Gotshal & Manges sufficient to make every creditor whole and then impose a penalty. The Court can impose its own penalties in the form of sanctions for the vilification of its processes because there are a lot of honest citizens sitting here who have come here seeking relief under the bankruptcy laws of the United States.

THE COURT: That is their problem. They come too late to the Bankruptcy Court because I cannot do anything. Congress has not given me the power to do what you think I can. I really don't want to hear you.

MR. ZIRINSKY: I have a brief statement to make. I would first like to hand up to the Court --

THE COURT: I don't need the decision by the Court of Appeals.

MR. ZIRINSKY: I would like to make it part of the record.

THE COURT: Do you mind, Mr. Zirinsky, because I really don't want to go into the merits of this dispute because I am bereft of jurisdiction and I am going to hold that. But so long as Mr. Shuffman has raised the question of sanctions for vilification, the third footnote of the Court of Appeals decision suggests to me if sanctions should be imposed for vilification or at least vexatious abuse of process, they should be imposed on you.

MR. SHUFFMAN: Absolutely, sir, but the Court of Appeals didn't have the guts to impose sanctions because as they know and we know we have been fighting for the truth of this case. Under the decision of the Court of Appeals not only are the petitions fraudulent but the schedules filed in this case are also fraudulent.

THE COURT: I thought you would have told that to Ira Block.

MR. SHUFFMAN: That will be told.

THE COURT: I thought you had by now.

MR. SHUFFMAN: The decision is only two days old. Under the Court of Appeals decision they have thrown out the statement of executory contracts.

THE COURT: Mr. Shuffman, I am not here to tell you that they are right, that they are wrong. They are not there, period. You in your voluminous correspondence with everybody has told all and sundry of what great reverence you hold for that Court, or held.

MR. SHUFFMAN: Held for that Court, sir.

THE COURT: As I read the Court of Appeals footnote, there are only two constraints against imposing costs on you because of what is patently a violation of the provisions of the United States Code concerning vexatious litigation, particularly by a lawyer. There might have been a lot of abuse. There is a decision in the latest F.Sup. bound we just got in which the Judge was constrained there in eight pages to list one hundred eighty-five actions brought by a pro se. There has got to be a point at which the business of lawyering is going to be according to the standards imposed on it.

MR. SHUFFMAN: When the truth is reached, I believe we will reach that point.

THE COURT: You may reach it.

MR. SHUFFMAN: I may.

THE COURT: All I am telling you today is you are in the wrong court.

MR. SHUFFMAN: Obviously, I have been.

THE COURT: Let me finish, please. There are two reasons why the Court of Appeals did not see fit to impose financial sanctions on you. Number one, they attributed it to your youth without in any way suggesting you were able or not able to pay what they thought.

Number two, they attributed it to the natural zeal you have in representing your mother without in any suggesting as a widow she is bereft of costs. They were quite, I think, constrained and quite generous, and I on their part resent your suggestion they didn't have the guts to impose sanctions.

MR. SHUFFMAN: I will tell that to the three-judge panel myself.

THE COURT: I am sure you are far more courageous than they.

MR. SHUFFMAN: That may be.

THE COURT: I as an officer of this court resent any suggestion they didn't have the guts. I think in an abundance of generosity of spirit they attributed your zeal to (A) your youth, although you are not as young as they may have thought you were but they sit a lot further away from you than I do, and the position of your mother --

MR. SHUFFMAN: She is a litigant just like any other one in the courtroom.

THE COURT: They felt she is a widow and there is no reason why you should not push forth for your client.

MR. SHUFFMAN: Absolutely, sir.

THE COURT: I, on the other hand, would come to the same result for another reason. Not your youth and not the fact that you represent your mother who is a widow whether she was left in poor -- let me finish.

MR. SHUFFMAN: Fine, sir.

THE COURT: I would be unwilling to impose sanctions on you in terms of money because the world of bankruptcy is such that one has to know it, one has to know how much jurisidction this rather inferior court has. I have only what Congress gave me.

I am sure there are jurisdictions that can handle a suit against Mr. Zirinsky, his law firm. I am sure the Securities & Exchange Commission is certainly robust enough to deal with this ripoff by the Magids of everybody. I am sure of it. I am sure the Internal Revenue Service, I am sure the United States Attorney. All of these people can do things.

I can't do so and I am prepared or was prepared to go along with the Court of Appeals on the ground that your youth in the matter of bankruptcy blinded you to the fact this is really a very narrow jurisdictioned court. But when you insult the Court of Appeals by telling me that they didn't have the guts to do really what should have been done, it riles me.

So therefore, I am going to have "more guts."

MR. SHUFFMAN: Good.

THE COURT: And because I consider this to be vexatious litigation --

MR. SHUFFMAN: Good --

THE COURT: -- and because I consider that everything the Court of Appeals has said in its third footnote is apt, I am going to impose the sanctions of 28 USC 1927 to the extent of two hundred fifty dollars against you personally. The Court of Appeals in this circuit has recently taken to personally charging attorneys for vexatious, frivolous, repeated litigation. I would point you to the Acevedo case, an immigration case, and a couple of others in that area of more recent vintage.

You are in the wrong court. I can't seem to convince you you are in the wrong court, but I will not tolerate an insult of the Court of Appeals that is not justified. They have been more than generous with you.

You will give me an order as an officer of the court, not as Weil, Gotshal, not as anything else. You will give me an order in keeping with I have done (A) under 28 USC Section 1927 personally imposing costs on Mr. Shuffman as counsel, and you will do the necessary thing to enter judgment.

If you feel it is a conflict, I will authorize the United States Attorney to do it. I want someone to do it.

I am going to deny this motion for the reasons described on the record. I will make it so ordered so you don't have to worry about filing more papers.

MR. SHUFFMAN: I am not finished.

THE COURT: Yes, you are. You are finished in this court, or I shall have you ejected by a marshal. You can be finished or I will have you ejected.

(At this time Honorable Roy Babitt left the bench.)

MR. SHUFFMAN: I would like to finish. There is a statement in the Court of Appeals decision --

(At this time this reporter was summoned to leave the courtroom by Honorable Roy Babitt.)

(Subsequently, Honorable Roy Babitt re-entered the courtroom and the following took place.)

THE COURT: I would like your name on the record to show the refusal of Mr. Shuffman at the conclusion of the Court's decision that he refused to leave the courtroom and engaged in what the Court found to be obstreperous conduct in a loud and unseemingly manner and that the Court has other matters of moment before it on its rather large calendar and that the Court invited an officer -- what is your name?

MR. ANTONELLI: Sergeant Peter Antonelli.

MR. SHUFFMAN: And I have consented to leave with the sergeant, but I would like the record to also show I waited until you finished when I apologized for interrupting, but when I attempted to speak you cut me off as you have done in the past.

THE COURT: I direct a copy of the minutes to be furnished to the United States Attorney for whatever action he wishes to take in respect of the contents. Thank you, sir.

MR. ANTONELLI: Okay.

APPENDIX B

FIRST ORDER OF THE BANKRUPTCY COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of	:	
HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC.,	:	73 B 674-676
Debtors.	:	

ROSE SHUFFMAN, as Executrix of the Estate of OSCAR SHUFFMAN,	:	
Appellant,	:	
-against-	:	
HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC. WELLINGTON PRINT WORKS, INC.,	:	
Appellee.	:	

12/8/78: Motion denied for the reasons described on the record.

It is so Ordered!

/s/ Roy Babitt
BJ

APPENDIX C

SECOND ORDER OF THE BANKRUPTCY COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of

HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC., 73 B 674-676

Debtors.

ROSE SHUFFMAN, as Executrix of the Estate of OSCAR SHUFFMAN,

Appellant,

-against-

HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC.

Appellee.

1/9/78: Motion denied.

It is so Ordered.

/s/ Roy Babitt
BJ

APPENDIX D

ENDORSED MEMORANDUM OF THE DISTRICT COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC., Debtors.	ARRANGE-MENT NOS. 73 B 674-676
ROSE SHUFFMAN, As Executrix of The Estate of OSCAR SHUFFMAN, Appellant, -against- HARTFORD TEXTILE CORPORATION OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC., Appellee.	

"From the notice of motion, the transcript of January 9, 1979 and the notice of appeal, it is clear that this was a motion for reargument which is not appealable. In re Brendan Reilly Assocs., Inc. 372 F.2d 235 (2nd Cir. 1967). The motion to dismiss the appeal is granted. The appeal is dismissed."

So ordered.

/s/ R. Owen

USDJ
3/28/79

APPENDIX E

OPINION OF THE COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 151 -- September Term, 1979

Argued October 29, 1979
Decided December 27, 1979
Docket No. 79-5026

#79-5026

In the matter of :

HARTFORD TEXTILE CORPORATION, :
OXFORD CHEMICALS, INC., :
WELLINGTON PRINT WORKS, INC., :

Debtors. :

ROSE SHUFFMAN, as Executive of :
the Estate of Oscar Shuffman, :

Appellant, :

v. :

HARTFORD TEXTILE CORPORATION, :
OXFORD CHEMICALS, INC., :
WELLINGTON PRINT WORKS, INC., :

Appellees. :

Before: MESKILL and KEARSE, Circuit Judges, and DOOLING, District Judge.*

* Honorable John F. Dooling, Jr., Senior Judge of the U.S. District Court for the Eastern District of New York, sitting by designation.

Appeal from an order of the United States District Court for the Southern District of New York, Honorable Richard Owen, Judge, dismissing an appeal from an order of the bankruptcy court denying rehearing.

Affirmed. Double costs awarded to appellees.

DAVID K. SHUFFMAN,
New York, New York
For Appellant

BRUCE R. ZIRINKSY,
New York (Brad Eric Scheler,
Weil, Gotshal & Manges,
New York, N.Y. on the brief), for Appellees.

PER CURIAM:

This is one of a large number of multiplicatous appeals taken by appellant Shuffman in connection with a Chapter XI bankrutpcy proceeding in which appellant's claim for $80,000 in unpaid commissions was denied.[1] The substantive background of the bankruptcy proceeding will not be repeated here, as it is fully set forth in In re Hartford Textile Corp., 588 F.2d 872 (2d Cir. 1978), cert. denied, 100 S. Ct. 146 (1979), in which we dealt not only with the merits of appellant's claim in bankruptcy, but also with a number of claims quite similar to most of those decided today.[2]

The present appeal is from an order of the United States District Court for the Southern District of New York, Richard Owen, Judge, dismissing Shuffman's appeal to the district court from an order of the bankruptcy court denying a rehearing. The bankruptcy court's order denying reargument was clearly not an appealable order, see In re Brendan Reilly Assoc. Inc., 372 F.2d 235 (2d Cir. 1976); In re Hartford Textile Corp. supra, 588 F.2d at 876, and we affirm.

In the course of deciding the previous Shuffman appeals little more than a year ago we took note of the repetitive and vexatious motions that had by then been filed in this Court:

> Appellant's counsel has filed at least twenty-five motions in the course of these proceedings. Many were meritless and many repetitive. As a result, the costs of the proceedings have been increased so

> unreasonably and vexatiously as to warrant consideration by this Court of an order requiring the attorney to satisfy personally the excess costs. See 28 U.S.C. §1927. We refrain from issuing such an order at this time only because counsel is a young man representing his widowed mother. In so doing, we in no way condone the course of conduct that counsel has pursued in this matter.

Id. at 876 n.3.

A year ago we thus refrained from imposing sanctions in this Court "only because counsel is a young man representing his widowed mother." Id. Undeterred by our remonstrance in that opinion, Shuffman has since then more than doubled her previous output of meritless, frivolous filing. For example, three of the appeals dismissed in 588 F.2d 872 were from denials of rehearings of the district court's order of February 22, 1978 confirming the bankruptcy court's denial of Shuffman's claim. Shuffman has moved in the district court at least four more times for reargument of the February 22, 1978 order and has appealed each of those denials of reargument to this Court as well. In addition, in the course of the present appeal Shuffman has moved for an order requiring the President to appoint a Special Prosecutor,[3] moved for rehearing en banc of the denial of that motion, moved for the recusal of three members of this Court, and moved for a rehearing - also en banc - of the denial of the recusal motion. Similar motions have been made in the course of at least six

other appeals at least as meritless as the present one. See, e.g., the Appendix attached to this opinion.[4]

Shuffman's attorney, David K. Shuffman, has on at least two occasions been subjected to sanctions during the course of proceedings related to the bankruptcy proceeding. An order imposing a fine of $250 for costs was imposed by the bankruptcy court on January 10, 1979. David K. Shuffman was held in contempt of the bankruptcy court on January 9, 1979 and an order fining him $50 for such contempt was entered on January 26, 1979. On March 21, 1979, appellees' attorneys requested that this Court take disciplinary action against David K. Shuffman on account of the repetitious, friviolous, vexatious and scandalous motions and appeals filed by Shuffman. On the same day, by en banc order we referred this motion to this circuit's' Committee on Admissions and Grievances for investigation and report. No report has yet been made.

By Shuffman's own count, given at oral argument on October 29, 1979, Shuffman's activities have thus far necessitated twenty-three en banc orders from this Court. We would be remiss if we continued much longer to allow valuable time to be diverted fromthe legitimate work on the court to the frivolous motions and appeals of Shuffman. We consider the present appeal, as well as those in Nos. 79-5036 and 79-5044, to be entirely frivolous, and we awarded appellees double their costs in connection with these matters.[5] 28 U.S.C. §1912 (1976); Fed. R. App. P. 38. We further advise Shuffman and her attorney

that any further frivolous, vexatious or repetitious motions may well result in the Shuffmans' being ordered to show cause why they should not be enjoined from filing any further papers with this Court, with whatever exceptions may be appropriate, in connection with the Chapter XI proceeding underlying these appeals.

The order appealed from is affirmed. Double costs are awarded to appellees.

FOOTNOTES

1/ Through the date of oral argument herein Shuffman had filed eleven appeals.

2/ In addition to the present case, we affirm in part and dismiss in part the appeal in No. 79-5036, we dismiss the appeal in No. 79-5044, and we deny certain motions in all three cases, in orders filed today.

3/ At some point the principal focus of Shuffman's attacks shifted from the substance of her claim in the Chapter XI proceedings, to a plethora of unfounded charges that those proceedings were "fixed" by opposing counsel, who thereby perpetrated a "massive swindle" of the creditors, and that various judges have ""fixed" cases. Shuffman has never produced a shred of evidence to substantiate her scandalous charges; they can most charitably be termed "fanciful."

4/ See also In re Hartford Textile Corp. No. 79-5035, also filed today.

5/ See orders filed in Nos. 79-5036 and 79-5044, filed today.

APPENDIX

Summary of some of the proceedings related to the present case. Unless otherwise indicated, all appeals, motions and requests were by Shuffman.

Docket Nos. 78-5024, 78-5032, 78-5036, 78-5045

Following this Court's December 6, 1978 opinion disposing of these appeals, 588 F.2d 872, the following occurred:

Motion (filed 12/11/78) for leave file oversized petition for rehearing out of time, en banc requested.	Granted by single judge 12/14/78
Motion (filed 1/9/79) for further extension of time to file petition for rehearing, en banc requested.	Denied 2/1/79
Motion (filed 1/9/79) to vacate 12/6/78 opinion, en banc requested.	Denied 3/5/79
Petition (filed 1/19/79) for rehearing and rehearing en banc of 12/6/78	Denied 3/5/79
Motion (filed 3/19/79) to reconsider and/or explain 12/6/78 opinion, en banc requested.	Dismissed repetitive
Notice by Supreme Court granting extension of time to file petition for writ of certiorari.	Filed 5/17/79

Motion (filed 5/25/79) for leave to refile petition for rehearing	Denied 6/29/79
Motion (filed 7/11/79) to rehear 6/29/79 denial of leave to refile petition for rehearing	Denied 8/6/79
Notice of filing of petition for writ of certiorari	Filed 8/9/79
Order of Supreme Court denying petition for writ of certiorari	Filed 10/9/79

Docket No. 78-5055

Appeal	Dismissed 3/6/79 on motion of appellees, as indistinguishable from issues adjudicated in Nos. 78-5024, 5032, 5036, and 5045 (12/6/78)

Motion (filed 12/14/78) to remand, en banc requested.	Denied 3/6/79
Request (filed 12/18/78) to consider en banc appellees' motions to dismiss	Denied 2/2/79
Motion (filed 3/9/79) to rehear and reargue 3/6/79 dismissal and denial of remand, en banc requested	Denied 9/17/79

Docket No. 79-5005

Appeal from Judge Carter's 12/12/78 dismissal of Shuffman's appeal from the bankruptcy court's denial of motion for a rehearing of its 8/26/77 order, which order had been affirmed by this Court's December 6, 1978 opinion, 588 F.2d 872	Dismissed 4/24/79 on motion of appellees
Motion (filed 2/21/79) to vacate scheduling order consolidating appeals in 78-5055, 79-5005, and 79-5008.	Denied 2/22/79
Request (filed 3/2/79) for en banc consideration of appellee's motion to dismiss	Denied 3/28/78
Motion (filed 3/2/79) for en banc rehearing of 2/22/79 order denying motion to vacate scheduling order requiring consolidation.	Denied as moot 6/14/79
Motion (filed 4/2/79) for recusal of Judges Van Graafeiland and Mulligan.	Denied 4/3/79
(oral motion for reconsideration)	Denied 4/3/79

Motion (filed 5/4/79) to rehear and reargue order dismissing appeal en banc	Denied 9/26/79

Docket No. 79-5008

Appeal from Judge Brieant's 12/21/78 denial of Shuffman's motion to vacate order of 2/22/78, which order had been affirmed by this Court's December 6, 1978 opinion, 558 F.2d 872.	Dismissed 4/24/79 on motion of appellees
Request (filed 3/2/79) to consider en banc appellee's motions to dismiss	Denied 3/28/79
Motion (filed 3/5/79) to remand to district, en banc requested	Denied 4/24/79
Motion (filled 3/5/79) to extend time to file appendix, en banc requested.	Denied as moot 6/14/79
Motion (filed 5/4/79) to rehear and reargue 4/24/79 order dismissing appeal and denying remand, en banc requested.	

APPENDIX F

FIRST ORDER OF THE COURT OF APPEALS

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

At a stated Term of the United Sates Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 7th day of February, one thousand nine hundred and eighty.

PRESENT:

HON. IRVING R. KAUFMAN, Chief Judge
HON. WILFRED FEINBERG
HON. WALTER R. MANSFIELD
HON. WILLIAM H. MULLIGAN
HON. JAMES L. OAKES
HON. WILLIAM H. TIMBERS
HON. ELLSWORTH A. VAN GRAAFEILAND
HON. THOMAS J. MESKILL
HON. JON O. NEWMAN
HON. AMALYA L. KEARSE,
Circuit Judges
HON. JOHN F. DOOLING,
District Judge

IN RE: HARTFORD TEXTILE CORP. etc. Debtors,	
ROSE SHUFFMAN, as Executrix of the Estate of Oscar Shuffman, Appellant,	#79-5026
v.	
HARTFORD TEXTILE CORP., OXFORD CHEMICALS, IN., WELLINGTON PRINT WORKS, INC., Appellees.	

A petition for rehearing containing a suggestion that the action be reheard in

banc having been filed herein by counsel for the appellant,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is denied.

/s/A. DANIEL FUSARO
A. DANIEL FUSARO
Clerk

APPENDIX G

SECOND ORDER OF THE COURT OF APPEALS

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 7th day of February, one thousand nine hundred and eighty.

PRESENT:

HON. THOMAS J. MESKILL, Circuit Judge

HON. AMALYA L. KEARSE, Circuit Judge

HON. JOHN F. DOOLING, District Judge

IN RE: HARTFORD TEXTILE CORP., etc. Debtors,	:	Docket
ROSE SHUFFMAN, As Executrix of the Estate of OSCAR SHUFFMAN Appellant	:	#-79-5026
HARTFORD TEXTILE CORP., OXFORD CHEMICALS, INC. WELLINGTON PRINT WORKS, INC., Appellee.	:	

A petition for a rehearing having been filed herein by counsel for the appellant

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

/s/A. DANIEL FUSARO
A. DANIEL FUSARO
Clerk